

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4796 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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SAVITABEN CHAKUBHAI SOLANKI

Versus

STATE OF GUJARAT

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Appearance:

MR YATIN SONI for Petitioner

Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/11/96

ORAL JUDGMENT :

1. This Special Civil Application has been filed by the mother of the detenu who is said to be an 18 years old boy. The detention order dated 15-5-96 passed by the Police Commissioner, Rajkot City whereby the detenu has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act') has been

challenged. The detention order was executed on 15-5-96 itself and since then the detenu is under detention lodged at Bhuj Jail, Bhuj.

2. The present Special Civil Application was filed on 9-7-96 and on 10-7-96 Rule returnable on 26-8-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 3 criminal cases for serious offences under IPC including the offence under S.302 were registered against the detenu year by year successively. Besides these the detaining authority has also taken into consideration the statements made by 3 witnesses against the detenu's criminal activities. The grounds enclosed with the detention order indicate that the nature of the offences against the petitioner are of serious nature and at this young age the detenu has involved himself in such serious offences and use of deadly weapons but the enormity of the offences is no ground to hold that it is a case of breach of public order. The detaining authority has found that the detenu is a dangerous person and accordingly the detention order has been passed. The witnesses have requested that their identity be kept secret.

3. The detention order has been challenged on more than one grounds but the learned counsel for the petitioner has stressed that no case of breach of public order is made out against the petitioner.

4. In view of the law laid down by the Supreme Court in the case of M.J. Shaikh v. M.M.Mehta, C.P. reported in 1995 (2) GLR 1268 it is clear that the allegations and materials relied upon by the detaining authority against the detenu do not disclose that it is a case of breach of public order. At the most it can be said to be a case of breach of law and order which could not form the basis for passing the order of detention. The detention order, therefore, deserves to be set aside on this ground alone. The detenu at this young age of 18 years has already suffered detention since 15-5-96.

5. Accordingly the Special Civil Application is allowed and the impugned detention order dated 15-5-96 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside and the detenu's detention is declared to be illegal. The respondents are directed to release the detenu and set him at liberty forthwith, if

not required in any other case. Rule is made absolute.

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